IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 32799 of 2006(D)

PETITIONER:

TELECOM TOWER & INFRASTRUCTURE (P) LTD.,
41/256, C-19, SECOND FLOOR,
MATHER SQUARE, OPP. NORTH RAILWAY STATION,
COCHIN-682 018, REPRESENTED BY EXECUTIVE
(SITE ACQUISITIONS & ADMINISTRATION)
MR. RAHUL DAS.

BY ADV. SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

RESPONDENTS:

EDAPPAL GRAMA PANCHAYAT,
P.O.EDAPPAL, MALAPPURAM DISTRICT-679 576,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO.32799 of 2006

Dated this 18th day of December, 2006

JUDGMENT

A detailed counter affidavit has been filed on behalf of the respondent Panchayat. Along with the counter affidavit, Ext.R1(a) a copy of the mass complaint filed by the inhabitants of the locality is produced. Ext.R1(c) produced along with the counter affidavit is a letter from the District Collector informing the Panchayat that since the tower is proposed to be constructed in thickly populated area and since one residential building is situated in close proximity to the proposed site permission shall not be issued to the petitioner.

2. Heard both sides. Sri.Santhosh Mathew the learned counsel for the petitioner would invite my attention to Ext.P3 judgment of this court and also the judgment of the Division Bench in **Reliance Infocomm v. Chemancherry Grama Panchayat (2006 (4) KLT 695)** . Counsel submitted that the District Collector in Ext.R1 (e) was concerned more about the working of diesel generator. The question of permission to operate the generator does not arise at this stage. The same question will arise only later. At present the Panchayat need

be concerned about the permission for constructing the tower only. Sri.Millu Dandapani, the learned counsel for the Panchayat also would refer to the Collector's order and Ext.R1(a) and R1 (b). He submitted that the existence of residential buildings in close proximity to the proposed site and also the existence of public school are genuine reasons for mass upraisal against the proposed tower. It may be possible to relocate the tower in the same plot itself so that the same will be as away as possible from the school and the nearest residential building.

3. Having considered the rival submissions in the light of the principles laid down by the Division Bench and also in Ext.P3 judgment, I am of the view that the Panchayat was not justified in relying on Ext.R1 (a) complaint for turning down the petitioner's request for permit for construction. Ext.P1 order accordingly, will stand quashed and there will be a direction to the Panchayat to reconsider the petitioner's application for permit for construction of the tower in the light of the principles laid down by Ext.P3 judgment and also the judgment of the Division Bench. The Panchayat will also explore possibility of the actual site of the proposed tower being relocated on the very same plot, so that the tower will be as away from as

possible from the nearest residential house and the public school. The petitioner will produce a copy of this judgment before the Panchayat and the Panchayat will take a fresh decision as directed above at the earliest and at any rate within two weeks of receipt of a copy of this judgment. The petitioner shall co-operate with the Panchayat in the matter by obliging to all reasonable suggestions made by the Panchayat regarding relocation on the same plot.

The writ petition is disposed of as above.

PIUS C.KURIAKOSE
Judge

dpk